



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: JULY 05, 2023

IN THE MATTER OF:

Appeal Board No. 629051

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 629048, 629049 and 629050, the claimant appeals from the decisions of the Administrative Law Judge filed April 21, 2023, which sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determinations holding the claimant ineligible to receive benefits, effective May 10, 2021 through May 16, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) benefits of \$151 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$100 on the basis that the claimant made a willful misrepresentation to obtain benefits.

In Appeal Board Nos. 629051, 629052 and 629053, the claimant appeals from the decisions of the Administrative Law Judge filed April 21, 2023, which sustained the Commissioner of Labor's timeliness objection and continued in effect the initial determinations disqualifying the claimant from receiving benefits, effective May 17, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with overpayments of \$4,800 in Federal Pandemic Unemployment Compensation

(FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$2,416 in PEUC benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil

penalty of \$1,082.40 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There were appearances by the claimant and on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant filed an original claim for benefits effective March 9, 2020. On June 6, 2021, he completed an electronic Department of Labor questionnaire in which he explained the circumstances surrounding this employment and his separation from it.

The initial determinations were mailed January 10, 2022. They were properly addressed to the claimant. He received them by January 18, 2022. The claimant and his mother read them. The determinations included instructions that the claimant must submit a "hearing request no later than 30 days from the Mail Date" on the initial determination. The claimant did not request a hearing within this 30-day period.

Subsequently, the claimant began receiving periodic collection letters from the Department of Labor. After he received one such letter advising that his case would be processed for collection efforts, the claimant electronically requested a hearing on March 22, 2023. This was the claimant's first hearing request.

**OPINION:** Pursuant to Labor Law Section 620 (1) (a), a claimant who is dissatisfied with an initial determination of the claim for benefits may, within thirty days after the mailing or personal delivery of notice of such determination, request a hearing. The Administrative Law Judge may extend the time fixed for requesting a hearing, upon evidence that the physical condition or mental incapacity of the claimant prevented the filing of such request within thirty days of the initial determination. The regulations of the Appeal Board provide that a hearing request will be deemed to have been made timely if the request is postmarked within 30 days of receipt of the determination. Absent any proof to the contrary, a determination shall be held to have been mailed on the date recited on the determination and received five business days after the mailing of the determination. (12 NYCRR 461.1)

The credible evidence establishes that the January 10, 2022 initial determinations were received by January 18, 2022. The claimant had through February 17, 2022 to timely request a hearing. He did not do so. The first hearing request was made over one year later on March 22, 2023. There is no contention or evidence that he had a physical condition or mental incapacity which prevented him from timely requesting a hearing. As the initial determination of ineligibility ended May 16, 2021, the March 22, 2023 hearing request is untimely as to the entire ineligibility period.

Although the Administrative Law Judge's decision placed importance on the claimant's disclosure to the Department of Labor about his employment and separation, such disclosure, made before the initial determinations were issued, is not relevant to the untimely hearing request. Also, we are not persuaded by the contentions that the claimant made a timely on-line hearing request. Notably, he had neither a copy of, nor a Department response to, this purported request; and his investigation found no record of such request that admittedly may not have "went through". Accordingly, we conclude that the claimant's hearing request was untimely. We are without jurisdiction to reach the underlying merits.

DECISION: In Appeal Board Nos. 629048, 629049 and 629050, the decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 629048, 629049 and 629050, the Commissioner of Labor's timeliness objection is sustained.

The initial determinations, holding the claimant ineligible to receive benefits, effective May 10, 2021 through May 16, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of PEUC benefits of \$151 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$100 on the basis that the claimant made a willful misrepresentation to obtain benefits, are continued in effect.

In Appeal Board Nos. 629051, 629052 and 629053, the decisions of the Administrative Law Judge are affirmed.

In Appeal Board Nos. 629051, 629052 and 629053, the Commissioner of Labor's

timeliness objection is sustained.

The initial determinations, disqualifying the claimant from receiving benefits, effective May 17, 2021, on the basis that the claimant voluntarily separated from employment without good cause; charging the claimant with overpayments of \$4,800 in FPUC benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$2,416 in PEUC benefits recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by zero effective days and charging a civil penalty of \$1,082.40 on the basis that the claimant made willful misrepresentations to obtain benefits, are continued in effect.

The claimant is denied benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER